



**MONDAY, JAN. 22**  
**3 - 5 P.M.**

# **Governance Committee Meeting**

The College of Education is home to a teacher preparation program designed to equip candidates with the necessary skills for effective teaching upon graduation.

Program participants undergo a crucial professional year of hands-on training, collaborating with mentor teachers in P-12 classroom settings. Throughout their student teaching semester, candidates dedicate five days a week to planning and delivering lessons, often facing challenges in balancing employment opportunities with tuition expenses and self-sustainability.



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# **UNBRIDLED**

The Campaign *for* Boise State University



**BOISE STATE UNIVERSITY  
FOUNDATION**

**GOVERNANCE COMMITTEE MEETING**

**Monday, January 22, 2024, 3 p.m.**

**AFC Room 406/Hybrid**

**[Join Zoom Meeting](#)**

**AGENDA**

- |   |                |
|---|----------------|
| I. Call Meeting to Order                                    | Debbie Flandro |
| II. Approval of Minutes from October 23, 2023 <b>[VOTE]</b> | Debbie Flandro |
| III. Director Prospect Shortlist                            | Debbie Flandro |
| IV. Confidentiality Policy                                  | Paul Powell    |
| V. Operating Agreement <b>[VOTE]</b>                        | Paul Powell    |
| VI. MANE Link Access (demo)                                 | Alison Bilgic  |
| VII. Other Business   | Debbie Flandro |
| VIII. Executive Session (if needed)                         | Debbie Flandro |
| IX. Adjournment   | Debbie Flandro |

**The next Foundation Board of Directors meeting is 2/9/2024, 9:30 a.m. - 1 p.m., AFC Ballroom/Zoom,  
Foundation Board Social is 2/9/2024, 5:30 p.m., Dallas Harris Elementary School,  
Governance Committee meeting is 4/22/2024, 3 - 5 p.m., AFC 406/Zoom.**



**BOISE STATE UNIVERSITY  
FOUNDATION**

**GOVERNANCE COMMITTEE MEETING**

**Monday, October 23, 2023, 3 p.m.**

**1004 S La Pointe St., Boise, ID 83706**

**(Home of Kenny and Suz Bolton)**

***Note: no Zoom option for this meeting***

**Meeting Minutes**

**Directors Present**

**Debbie Flandro, Committee Chair  
Kenny Bolton, Jim Martin, Bruce Mohr,  
Glen Walker, Kimberly Welsh, Matt Wolff**

**Staff Attendees**

**Matthew Ewing, Paul Powell, Alison Bilgic**

**I. Call Meeting to Order**

Debbie Flandro called the meeting to order.

**II. Approval of Minutes from July 24, 2023 [VOTE]**

Corrected the misspelling of a last name in the minutes. Ms. Flandro called for a motion to approve the amended minutes from July 24, 2023 Governance Committee Meeting.

**Motion by Glen Walker**

**Second by Kimberly Welsh**

**Approved by unanimous vote**

**III. Mentor Update**

Ms. Flandro lead a follow up conversation on mentoring the new Board members. It was confirmed that Kenny Bolton will mentor Chuck Hallett, Brian Yeargain will mentor Darren Kyle. Matt Wolff expressed that he has received a fair amount of mentoring from Chris Roth, and will continue to work with Mr. Powell on where he can best contribute.

**Action: Alison & Paul will check-in with Stacy Pearson.**

**IV. Recruitment Update/Future Board Members Prospects**

The committee discussed a number of factors: who will be leaving the board, what roles we are looking to fill, our ideal number of new members (5 or 6), potential candidates for the **shortlist** which will be presented in January, and if any current board members could benefit from a conversation about their role and commitment to the board.

Three members rolling off this year: Dave Wali whose term ends plus Holli Woodings and Odette Bolano who both resigned due to relocating. Alison Bilgic noted that Ms. Bolano will finish her term in

December, and recommended a “replacement,” (to maintain the Board’s connection with St. Alphonsus). Bylaws state that roles are not transferable, but it was decided that we should include her recommendation in our shortlist.

The New Director Prospects FY24 list was reviewed in detail and members of the board were assigned to do initial outreach and gauge prospect’s interest prior to our January meeting.

**Action: Ms. Bilgic will reach out to those assigned to do outreach and collect information to coordinate our shortlist before the January 22 Governance Committee meeting.**

#### **V. Foundation Board Resources/Website Update**

Alison Bilgic informed the committee that progress has been made on setting up the board website, and that she is hopeful the board will have access early in the new year.

#### **VI. Policy Review Update**

The committee also reviewed the Policy Review Timeline and highlighted the important role of the Governance Committee to ensure we are continuing to review all policies at least once every three years.

#### **VII. Other Business**

With the Campaign Launch Event fast approaching several committee members voiced their excitement. Matt Wolff mentioned that he is choosing the launch over St. Luke’s Light of Philanthropy event, and Kenny Bolton sent his regrets to St. Luke’s and the YMCA.

Bruce Mohr also put in a plug for the Honors College Distinguished Lecture Series. Namely the upcoming conversation between Dr. Cornel West and Dr. Robert P. George on political discourse. They are likely to share polar opposite views. **Action: share the timing for the Spring 2024 speaker: Johnathan Haidt, Social Psychologist at New York University; when it is available.**

#### **VIII. Executive Session**

Executive Session was not needed.

#### **IX. Adjournment/Happy Hour**

Debbie Flandro adjourned the meeting.

#### **Minutes Approved:**

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Debbie Flandro, Committee Chair

**Next Foundation Board of Directors meeting is 11/10/2023, 10:45 a.m. - 11:45 a.m., AFC 209/Zoom**

**Volunteer Summit is 11/10/2023, 12:00 p.m. – 6:30 p.m., AFC**

**Foundation Board of Directors Engagement Event is 11/11/2023, 5 - 8 p.m., Big Blue Huddle, AFC**

**The next Governance Committee meeting is 1/22/2024, 3 – 5 p.m., AFC 406/Zoom**

Boise State University Foundation  
New Director Prospects FY24

Name	Committee Member-contacting prospect	Notes or Comments from Committee Member	Organization	Location	University	Age	Other
<b>Draft 2024 Shortlist Contact by Committee Members:</b>							
Cole Clinger	Matthew Ewing	very interested	Melaleuca Inc. (President)	Shelley, ID	Boise State (COAS)	42	BSU Cheerleader. South video board
Lisa Grow	Paul Powell	unlikely this year	Idaho Power (Pres. & CEO)	Eagle, ID	Boise State, MBA, Idaho	58	Pres. Business Advisory Council, Former COEN Advisory Board, 2014 COBE Outstanding Alumni
Tara Martens Miller	Paul Powell	very interested	Of counsel at Holland & Hart	Boise, ID	Boise State, Tulane JD	51	COBE Adjunct professor of business law, Director for Martens Family Foundation
David McFadyen	Odette Bolano	very interested	St. Alphonsus Regional Medical Center	Eagle, ID	Boise State, NNU MBA	47	SARMC President. COHS_Health Informatics & Info. Mgmt. Advisory Bd.
Christina Moore Ward	Glen Walker	very interested	Christina & Company - Keller Williams Realty	Boise, ID	Boise State (COHS)	41	BAA Board, BAA/Alumni Auction Committee, BSU Volleyball
Mark Noble	Kenny Bolton	not this year	Farm Development Corporation	Boise, ID			
Skip Oppenheimer	Royanne Minskoff		Oppenheimer Companies, Inc. (CEO)	Boise, ID	Idaho, Harvard MBA	77	Frank Church Board Pres., Federal Reserve Board
Shawn Siddoway	Matthew Ewing		Micron	Boise, ID	BYU and Boise State	50	
Damon Thompson	Kenny Bolton	not this year	Farm Development Corporation	Boise, ID			
Ron Van Auker Jr.	Jim Martin		Van Auker Companies (Co-owner)	Nampa, ID	Oregon	41	COBEAC Board, Pres., BAA



**BOISE STATE UNIVERSITY  
FOUNDATION**

Memo

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**TO:** Boise State Foundation Governance Committee

**FROM:** Alison Bilgic  
Director for Foundation and Board Operations  
Boise State University Advancement

**SUBJECT:** Confidentiality Policy Statement Discussion

**MEETING DATE for REVIEW:** 1/22/2024

**REFERENCE:** Confidentiality Policy of April 2011.

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**Background:**

The Confidentiality Policy was last updated in April 2011, and is due for review. The attached redline draft does not suggest substantial changes aside from formatting.

Most of those formatting changes will simply bring the policy in line with the new Foundation Policy format, simplify the header, and use clarifying language. One important formatting change is to make the Acknowledgement Agreements for Employees and Non-Employees appendices of the policy.

# Boise State University Foundation

## Confidentiality Policy

Effective date: April 2011

Latest review: January 2024



**BOISE STATE UNIVERSITY**

~~Boise State University Foundation, Inc. Approved: 7/16/2008 Page 1 of 2~~  
~~Policy Effective: 7/16/2008~~  
~~Board of Directors Revised: 1/27/2010, 4/27/2011~~

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## I. Purpose:

The Boise State University Foundation, Inc. (“Foundation”) ~~has maintains certain~~ information that is confidential and proprietary in nature. All Responsible Persons (defined below) have an obligation to protect this information for the benefit of the Foundation and its donors.

## II. Responsible Persons:

This Confidentiality Policy is applicable to all individuals who have access to Confidential Information as defined in this Policy (“Responsible Persons”). For example, this would include the following:

- Foundation Board of Directors and employees;
- Consultants, including accountants and attorneys;
- Boise State University (“BSU”) employees;
- Board members and employees of BSU-affiliated organizations (for example, the Bronco Athletic Association, Alumni Association, Frank Church Institute, Friends of Nursing);
- BSU college advisory board members; and
- All others who have access to Confidential Information.

## III. Confidential Information:

“Confidential Information” is defined in this Confidentiality Policy to include the following:

1. Past, current, and prospective donor information, including, without limitation, donor identities, donation histories, any kind of personal or corporate financial information, salaries, net worth, family data, asset holdings, and any other details of the donors’ relationships with the Foundation.
2. All other information in the Foundation’s donor database, including but not limited to scholarship recipients, graduates, and members in BSU-affiliated organizations.
3. Information concerning the Foundation’s business and operations, including without limitation, cost information; profits; investments; accounting and unpublished financial information; development plans; studies; positions or statements of individual board members, advisors, or staff; personnel issues; and nonpublic information concerning the Foundation’s employees, officers, directors, service providers, and independent contractors.
4. BSU records of any kind, including without limitation, unpublished financial information, information concerning projects and developments, student information and data, applicant information and data, information concerning any BSU employees, information



regarding any BSU donors or partners, and any other information concerning BSU that is not made available to the public.

5. Any trade secrets defined in the Idaho Trade Secrets Act, Idaho Code §48-801, including any information, formulae, patterns, compilations, programs, computer programs, devices, methods, techniques, or processes that derive independent economic value from not being generally known to other persons and not being readily ascertainable by proper means by other persons and are the subject of reasonable efforts by the Foundation to protect their secrecy.
6. Notwithstanding the foregoing, the definition of "Confidential Information" does not include any information that is generally available to the public

#### **IV. Obligation to Protect Confidential Information:**

Each Responsible Person is required to sign the Foundation's Acknowledgment and Agreement Regarding Confidential Information (either Appendix A, or Appendix B, depending on their relationship to the Foundation) prior to having access to Confidential Information.

Each Responsible Person shall keep the Confidential Information strictly confidential, whether it is in written, electronic, or verbal form. No Responsible Person shall use or disclose such information to others without the Foundation's written consent, except as necessary to perform the Responsible Person's job.

This Confidentiality Policy shall not be construed in any manner to prevent the Foundation from disclosing information to taxing authorities or other governmental agencies or courts having regulatory control or jurisdiction over the Foundation.

For each BSU-affiliated organization which has its own confidential information policy and agreement, the Foundation will review the policy and agreement and decide whether it will fulfill the obligations under this Confidential Information Policy.

#### **V. Unlimited Time to Protect Confidential Information:**

This Confidentiality Policy applies during a Responsible Person's employment or services to the Foundation, and it also applies after such employment or services have concluded.

The Foundation Executive Director will send an annual communication to all Responsible Persons to remind them of their obligation to comply with this Policy.



BOISE STATE UNIVERSITY  
FOUNDATION

APPENDIX A

**Acknowledgment and Agreement  
Regarding Confidentiality Policy  
(Employee)**

By signing below, I acknowledge and agree to the following:

1. I have read and understand the Boise State University Foundation, Inc. Confidentiality Policy effective as of ~~April 27, 2011~~ January 2024 (the "Policy"). I am a "Responsible Person" as defined in the Policy.
2. I am familiar with the terms of the Policy and agree to be bound by them.
3. Certain information belonging to the Foundation, including but not limited to information about its donors, is confidential and is defined in the Policy as "Confidential Information."
4. In order to perform my duties for the Boise State University Foundation, Inc. (the "Foundation"), the Foundation must disclose some or all of its Confidential Information.
5. I have an obligation to protect the Foundation's Confidential Information at all times.
6. Failure to comply with the terms of the Policy may lead to disciplinary action, up to and including discharge of my employment with or discontinuation of my services to the Foundation.
7. In the event of a breach or threatened breach of this Policy, I acknowledge that money damages alone would be an inadequate remedy. Therefore, I agree that the Foundation shall be entitled to an injunction to restrain me from such breach, in addition to any other rights and remedies to which the Foundation may be entitled.
8. This agreement shall be construed and enforced in accordance with Idaho law, and I consent to jurisdiction in Idaho regarding any dispute arising under this agreement.
9. I am an employee at-will, and nothing in this Agreement or the Policy shall be interpreted to alter my status as an employee at-will.

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature



BOISE STATE UNIVERSITY  
FOUNDATION

**APPENDIX B**

**Acknowledgment and Agreement  
Regarding Confidentiality Policy  
(Non-Employee)**

By signing below, I acknowledge and agree to the following:

1. I have read and understand the Boise State University Foundation, Inc. Confidentiality Policy effective as of ~~April 27, 2011~~ January 2024 (the "Policy"). I am a "Responsible Person" as defined in the Policy.
2. I am familiar with the terms of the Policy and agree to be bound by them.
3. Certain information belonging to the Foundation, including but not limited to information about its donors, is confidential and is defined in the Policy as "Confidential Information."
4. In order to perform my duties for the Boise State University Foundation, Inc. (the "Foundation"), the Foundation must disclose some or all of its Confidential Information.
5. I have an obligation to protect the Foundation's Confidential Information at all times, regardless of whether I have a direct relationship with the Foundation or not.
6. In the event of a breach or threatened breach of this Policy, I acknowledge that money damages alone would be an inadequate remedy. Therefore, I agree that the Foundation shall be entitled to an injunction to restrain me from such breach, in addition to any other rights and remedies to which the Foundation may be entitled.
7. This agreement shall be construed and enforced in accordance with Idaho law, and I consent to jurisdiction in Idaho regarding any dispute arising under this agreement.

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature



WHEREAS, the University and Foundation desire to set forth in writing various aspects of their relationship with respect to matters such as the solicitation, receipt, management, transfer and expenditure of funds.

WHEREAS, the Parties hereby acknowledge that they will at all times conform to and abide by the Idaho State Board of Education's Governing Policies and Procedures, Gifts and Affiliated Foundations Policy V.E. so long as the policies and procedures are consistent with the Foundation's tax-exempt status and applicable Internal Revenue Service laws and rules, and that they will submit this Operating Agreement for initial State Board of Education ("State Board") approval, and thereafter every three (3) years, or as otherwise requested by the State Board, for review and re-approval.

WHEREAS, the Foundation and the University intend for this Operating Agreement to be the written operating agreement required by State Board Policy V.E.2.b.

NOW THEREFORE, in consideration of the mutual commitments herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

## **ARTICLE I Foundation's Purposes**

The Foundation is the primary affiliated foundation that receives contributions and holds, protects, manages, and invests such funds for the benefit of the University. Accordingly, to the extent consistent with the Foundation's Articles of Incorporation, Bylaws, its tax-exempt status, and the State Board's Policies and Procedures, the Foundation shall: (1) solicit, receive and accept gifts, devises, bequests and other direct or indirect contributions of money and other property made for the benefit of the University from the general public (including individuals, corporations, other entities and other sources); (2) manage and invest the money and property it receives for the benefit of the University; and (3) support and assist the University in fundraising and donor relations.

In carrying out its purposes, the Foundation shall not engage in activities that: -(1) conflict with federal or state laws, rules and regulations (including all applicable provisions of the Internal Revenue Code and corresponding Federal Treasury Regulations); (2) cause the University to be in violation of applicable policies of the State Board; or (3) conflict with the role and mission of the University.

## **ARTICLE II Foundation's Organizational Documents**

The Foundation shall provide copies of its current Articles of Incorporation and Bylaws to the University. The Foundation, to the extent practicable, also shall provide the University with an advance copy of any proposed amendments to the Foundation's Articles of Incorporation and Bylaws. The University shall provide all such documents to the State Board.

**ARTICLE III**  
**University Resources and Services**

1. University Employees Liaisons.

a. ~~University/Foundation Liaison~~ University Liaison: The University's ~~Vice President ("University President") for University Advancement~~ shall serve as the University's Liaison to the Foundation ("University Liaison"). The duties and responsibilities of the University Liaison, which may be delegated by the University Liaison, include the following:

i. The ~~University's Vice President for University Advancement~~ University Liaison shall be responsible for ~~coordinating the University's and~~ communicating with the Foundation regarding the Foundation's fundraising efforts and for supervising and coordinating the administrative support provided by the University to the Foundation.

ii. ~~The Vice President for University Advancement or designee~~ University Liaison shall be invited to attend each meeting of the Foundation's Board of Directors ("Foundation Board") and shall report on behalf of the University to the Foundation's Board of Directors regarding the University's coordination with the Foundation's fundraising efforts as a non-voting advisor. The University Liaison will provide regular reports to the Foundation Board about the University's financial position and activities, including its use of gifts. The University Liaison may also report other information to the Foundation Board that is pertinent to the common goals of the University and the Foundation.

~~iii.~~ iii. The University Liaison will work with the Foundation to set the Foundation's goals relating to fundraising and engagement in support of the University's priorities.

b. Foundation Liaison: The Chief Executive Officer of the Foundation ("Foundation CEO") will serve as the Foundation's liaison to the University ("Foundation Liaison"). The duties and responsibilities of the Foundation Liaison, which may be delegated by the Foundation Liaison to a designee, include the following:

i. The Foundation Liaison shall be responsible for communicating with the University regarding the Foundation's fundraising efforts and for coordinating any administrative support provided by the University to the Foundation.

- ii. The Foundation Liaison may attend University leadership meetings as a non-policy making advisor. The Foundation Liaison will provide regular reports to the University about the Foundation's financial position and activities. The Foundation Liaison may also report other information to the University that is pertinent to the common goals of the University and the Foundation.
- iii. The Foundation Liaison will work with University leadership to set the Foundation's goals relating to fundraising and engagement in support of the University's priorities.

## 2. Loaned Employees.

b.a. Executive Director Foundation CEO: ~~The Executive Director of the Foundation~~ CEO is an employee of the University who is loaned to the Foundation. ~~All of the Executive Director~~ The Foundation CEO's services shall be provided directly to the Foundation as follows and as set forth in the applicable Loaned Employee Agreement (as defined below):

- i. Duties. ~~The Executive Director shall be~~ Foundation CEO is responsible for the strategy and planning for and the supervision and control of the day-to-day operations of the Foundation. ~~More specific duties of the Executive Director may be set forth in a written job description prepared by the Foundation and attached to the Loaned Employee Agreement described in paragraph (iii) below. The Executive Director shall be subject to the control and direction of the Foundation.~~
- ii. Reporting Structure. The Foundation CEO reports to and takes direction from the Foundation Board. All other Loaned Employees (as defined below) report to the Foundation CEO or another Loaned Employee designated by the Foundation CEO.
- ~~i.~~ iii. Vacancy. In the event the Foundation CEO resigns or is terminated by the University, the Foundation terminates the Foundation CEO's Loaned Employee Agreement or the Foundation CEO otherwise ceases to provide services to the Foundation, hiring of the subsequent Foundation CEO shall be done in accordance with Foundation and University policies and applicable law.
- ii. ~~The Executive Director shall be entitled to the University benefits to the same extent and on the same terms as other full time University employees of the same classification as the Executive Director. The Foundation shall reimburse the University for all costs incurred by the University in connection with the University's employment of the Executive Director including such expenses as salary, payroll taxes, and benefits.~~

~~iii. ——— Generally. The Foundation and the University shall have entered and will enter into a written additional agreements (each such agreement, in the form of Exhibit “A” hereto, establishing that the Executive Director is an employee of the University but subject a “Loaned Employee Agreement”) for the loaning of Loaned Employees (as defined below) to the direction and control of the Foundation (generally a “Loaned Employee Agreement”) by the University. The Loaned Employee Agreements shall also set forth the relative rights and responsibilities of the Foundation and the University. The Loaned Employees have no function at the University other than to act in their capacity as employees loaned to the Foundation and are subject to the exclusive day-to-day direction, control and supervision of the Foundation. The Foundation must provide the University with prior approval to: (a) post any position for hiring and (b) hire any employee that the Foundation and the University intend to be a Loaned Employee before the University employs such individual. Notwithstanding the provisions of the section, no University personnel other than a Loaned Employee shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions or the supervision of Loaned Employees. For purposes of this Operating Agreement, “Loaned Employee” means all positions for which the Foundation and University enter into Loaned Employee Agreements during a particular fiscal year regardless of whether each such Loaned Employee is loaned to the Foundation by the University for the entire 12 months of the fiscal year and the Foundation’s budget for the fiscal year contains the expenses associated with all such positions for the entire fiscal year. with respect to the Executive Director, including the following:~~

~~1) ——— The Foundation shall have the right to choose to terminate the Loaned Employee Agreement in accordance with Foundation Procedures and applicable law, such termination may include election by the Foundation for non-renewal of the Loaned Employee Agreement.~~

~~2) ——— Termination of the Loaned Employee Agreement in accordance with the Foundation procedures and applicable law shall constitute grounds for a termination proceeding by the University or for non-renewal of any obligation of the University to employ the Loaned Employee, subject to applicable legal and procedural requirements of the State of Idaho and the University.~~

~~3) ——— The Loaned Employee shall be subject to the supervision, direction and control of the Foundation Board of Directors and shall report directly to the Foundation Executive Chair or designee.~~

~~\_\_\_\_\_~~  
~~c. ——— Other Loaned Employees. Other loaned employees providing services pursuant to this Operating Agreement shall also serve pursuant to a Loaned Employee Agreement which shall set forth their particular responsibilities and duties.~~

~~\_\_\_\_\_~~  
~~d. ——— Other University Employees Holding Key Foundation or Administrative or Policy Positions: In the event the University and the Foundation determine it is~~





b. Components of University Service Charge. Each of the components of the University Service Charge and the defined terms used in defining those components are defined as follows:

- i. “Loaned Employee Payments” means an amount equal to the actual payments made by the University for the salaries and benefits of the Loaned Employees during the fiscal year.
- ii. “College and Unit Development Costs” means Loaned Employee Payments and related development expenses agreed to be paid by Colleges or Units.
- iii. “OIT Costs” means the Office of Information Technology (“OIT”) budget comprised of (a) salary and fringe benefits for OIT personnel and (b) master enterprise licenses and contracts owned by the University and used, at least in part, by the Foundation for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.
- iv. “Operations Support Costs” means the sum of Payroll Support Costs and HR Costs, which are defined as follows:
  - 1) “Payroll Support Costs” means the product of (a) Payroll Support Amount as defined in the Service Agreement, (b) the number of Loaned Employees during the fiscal year and (c) the number of payroll periods in the fiscal year.
  - 2) “Accounts Payable Costs” means the sum of (a) the number of invoices processed by the University for the Foundation during the fiscal year multiplied by Accounts Payable Amount as defined in the Service Agreement and (b) any payments made by the University to third parties to pay such invoices on the Foundation’s behalf.
  - 3) “HR Costs” means the University’s human resources department budget for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.
- v. “Rent” means the square feet of the leased premises multiplied by Rental Rate for the fiscal year as defined in the Service Agreement.

c. Changes to Components of University Service Charge.

- i. Generally. For the fiscal year commencing July 1, 2025 (“FY26”) or any fiscal year after FY26, each of the College and Unit Development Costs, OIT Costs, Payroll Support Amount and Rental Rate (each a “Component”) may be adjusted as follows: (a) the Foundation CEO and University President may agree to increase or decrease a Component by an amount that is equal to or less than 5% of the amount of such Component for the prior fiscal year without the approval of the State Board or the Foundation Board; and (b) the State Board and the Foundation Board must approve any increase or decrease in a Component by an amount that is greater than 5% of the amount of such Component for the prior fiscal year.
- ii. Discontinuation of Services. If all services provided by the University to the Foundation in connection with any of the terms defined in Article III Section 4.b are discontinued in their entirety, then the defined term associated with such services discontinued shall be removed from the formula for calculating the University Service Charge set forth in Article III Section 4.a.

5. Foundation Services. As set forth on greater detail in the Services Agreement, the Foundation shall charge the University (“Foundation Service Charge”) to provide asset management, investment, fundraising, alumni relations and certain information technology services to the University (collectively, “Foundation Services”).

6. Foundation Service Charge.

- a. Foundation Service Charge Formula. The Foundation Service Charge shall be calculated as follows:

$$\frac{\text{Foundation Service Charge}}{\text{Cost to Raise a Dollar x Fundraising Goal}}$$

- b. Components of Foundation Service Charge. For purposes of the formula set forth in Article III Section 6, the cost associated with Foundation’s fundraising efforts to raise one dollar (“Cost to Raise a Dollar”) shall be the CRD Amount as defined in the Service Agreement, which is based on current industry standards. The Foundation CEO and the University President shall collaboratively develop a list of vital goals (“Vital Goals”) that shall include a goal for the amount of money the Foundation aims to raise through the Foundation’s fundraising efforts for the upcoming fiscal year (“Fundraising Goal”).

c. Changes to Components of Foundation Service Charge.

- i. CRD Amount. For FY26 or any fiscal year after FY26, the CRD Amount may be adjusted as follows: (a) the Foundation CEO and the University President may agree to increase or decrease the CRD Amount by an amount that is equal to or less than 5% of the prior fiscal year's CRD Amount without the approval of the State Board or the Foundation Board; and (b) the State Board and the Foundation Board must approve any increase or decrease in the CRD Amount by an amount that is greater than 5% of the prior fiscal year's CRD Amount.
- ii. Appropriations Holdback. In the event the State of Idaho legislature reduces the appropriation to the University for a particular fiscal year after the fiscal year commences, the Foundation Service Charge may be reduced by an amount that is proportionate to the amount of the reduction to the total appropriation to the University. The Foundation may modify the Foundation Services or reduce the number of Loaned Employees, in the Foundation's discretion, to accommodate the reduction in the Foundation Service Charge pursuant to the process set forth in the Service Agreement, which will include adequate notice to the Parties and documentation of the changes.

7. Process for Reconciliation. The process of reconciling the University Service Charge and the Foundation Service Charge will be set forth in the Service Agreement. Pursuant to the terms of the Service Agreement, the Foundation shall, after the reconciliation process is complete, make a payment to the University in an amount equal to the net of the University Service Charge and the Foundation Service Charge if the net amount is owed by the Foundation to the University. In no event will the University be required to make a payment to the Foundation.

~~3.8.~~ University Facilities and Equipment. The University shall provide the use of ~~the certain~~ University's office space and equipment to the Foundation upon ~~the terms agreed to by the University~~ of use set forth in the AFC Lease Agreement by and ~~between~~ the Foundation and University ("AFC Lease Agreement"). ~~The terms of use (including amount of rent) of the University's office space and equipment~~ Rental Rate for the Foundation's use of facilities under the AFC Lease Agreement shall be ~~as~~ set forth in the ~~Support~~ Service Agreement.

~~4.9.~~ No Foundation Payments to University Employees. Notwithstanding any provision of this Operating Agreement to the contrary, the Foundation shall not make any payments directly to a University employee in connection with any resources or services provided to the Foundation pursuant to this Operating Agreement.

## **ARTICLE IV Management and Operation of Foundation**

The management and control of the Foundation shall rest with its Board of Directors.

1. Gift Solicitation.

~~a. *Coordination with Vice President for University Advancement*~~ Form of Solicitation. All Foundation gift solicitations shall ~~be coordinated with the Vice President for University Advancement.~~

~~b.a. *Form of Solicitation.*~~ Any and all Foundation gift solicitations shall make clear to prospective donors that (1) the Foundation is a separate legal and tax-exempt entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the University; and (2) responsibility for the governance of the Foundation, including the investment of gifts and endowments, resides in the Foundation's Board of Directors.

~~e.b. *Foundation is Primary Donee.*~~ Absent unique circumstances, prospective donors shall be requested to make gifts directly to the Foundation rather than to the University. Additionally, the University shall require its affiliated foundations and nonprofit organizations to direct revenue, including gifts and membership dues, to the Foundation for management.

2. Acceptance of Gifts.

a. *Approval Required Before Acceptance of Certain Gifts.* Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by the University, the Foundation shall obtain the prior written approval of the University. Similarly, the Foundation shall also obtain the prior written approval of the University of the acceptance of any gift or grant that would impose a binding financial or contractual obligation on the University.

b. *Acceptance of Gifts of Real Property.* The Foundation shall conduct adequate due diligence on all gifts of real property that it receives. All gifts of real property intended to be held and used by the University shall be approved by the State Board before acceptance by the University and the Foundation. In cases where the real property is intended to be used by the University in connection with carrying out its proper functions, the real property may be conveyed directly to the University, in which case the University and not the Foundation shall be responsible for the due diligence obligations for such property.

c. *Processing of Accepted Gifts.* All gifts received by the University or the Foundation shall be delivered (if cash) or reported (if any other type of property) to the Foundation's designated gift administration office (a unit of the Foundation) in accordance with the Support Service Agreement.

3. Fund Transfers. The Foundation agrees to transfer funds, both current gifts and income from endowments, to the University on a regular basis as agreed to by the Parties. The Foundation's Chief Financial Officer, Treasurer or other individual to whom such authority has been delegated by the Foundation's Board of Directors shall be responsible for transferring funds as authorized by the Foundation's Board of Directors.

a. *Restricted Gift Transfers.* The Foundation shall inform the University officials into whose program or department funds are transferred of any restrictions on the use of such funds and provide such officials with access to any relevant documentation concerning such restrictions. Such University officials shall account for such restricted funds separate from other program and department funds in accordance with applicable University policies and shall notify the Foundation on a timely basis regarding the uses of such restricted funds.

b. *Unrestricted Gift Transfers.* The Foundation may utilize any unrestricted gifts it receives for any use consistent with the Foundation's purposes as generally summarized in Article I of this Operating Agreement. If the Foundation elects to use unrestricted gifts to make grants to the University, such grants shall be made at such times and in such amounts as the Foundation's Board ~~of Directors~~ may determine in the Foundation Board's sole discretion.

#### 4. Foundation Expenditures and Financial Transactions.

a. *Signature Authority.* The Foundation shall designate certain of its directors, officers, and staff with signature authority for the Foundation in all financial transactions pursuant to its governing documents. The Foundation may supplement or change this designation; provided, however, in no event may the person with Foundation signature authority for financial transactions be a University employee in a key administrative or policy making capacity, including but not limited to a University Vice President.

b. *Expenditures.* All expenditures of the Foundation shall be (1) consistent with the charitable purposes of the Foundation, and (2) not violate restrictions imposed by the donor or the Foundation as to the use or purpose of the specific funds.

5. University Report on Distributed Funds. On a regular basis, which shall not be less than annually, the University shall report to the Foundation on the use of restricted and unrestricted funds transferred to the University. This report shall specify the restrictions on any restricted funds and the uses of such funds.

6. Transfer of University Assets to the Foundation. No University funds, assets, or liabilities may be transferred directly or indirectly to the Foundation without the prior approval of the State Board except when:

- a. A donor inadvertently directs a contribution to the University that is intended for the Foundation in which case such funds may be transferred to the Foundation so long as the documents associated with the gift indicate the Foundation was the intended recipient of the gift. In the absence of any such indication of donor intent, such funds shall be deposited in an institutional account, and State Board approval will be required prior to the University's transfer of such funds to the Foundation.
- b. The University has gift funds that were originally transferred to the University from the Foundation and the University wishes to return a portion of those funds to the Foundation for reinvestment consistent with the original intent of the gift.



- c. Transfers of a *de minimis* amount not to exceed \$10,000 from the University to the Foundation provided such funds are for investment by the Foundation for scholarship or other general the University support purposes. This exception shall not apply to payments by the University to the Foundation for obligations of the University to the Foundation, operating expenses of the Foundation or other costs of the Foundation.
- d. The transfer is of funds raised by the University for scholarship or program support and the funds are deposited with the ~~affiliated foundation~~ Foundation for investment and distribution in accordance with the purpose for which the funds were raised.

7. Separation of Funds. All Foundation assets (including bank and investment accounts) shall be held in separate accounts in the name of the Foundation using Foundation's Federal Employer Identification Number. The financial records of the Foundation shall be kept using a separate chart of accounts. For convenience purposes, some Foundation expenses may be paid through the University such as payroll and campus charges. These expenses will be paid through accounts clearly titled as belonging to the Foundation and shall be reimbursed by the Foundation on a regular basis.

8. Insurance. The Foundation shall maintain insurance to cover the operations and activities of its directors, officers and ~~employees~~ Loaned Employees. The Foundation shall also maintain general liability coverage.

9. Investment Policies. All funds held by the Foundation, except those intended for short term expenditures, shall be invested in accordance with the Uniform Prudent Management of Institutional Funds Act, Idaho Code Sections 33-5001 to 33-5010, and the Foundation's investment policy which is attached hereto as Exhibit "~~C~~" A and incorporated herein; provided, however, the Foundation shall not invest any funds in a manner that would violate the applicable terms of any restricted gifts. The Foundation shall provide to the University any updates to such investment policy ~~which updates and upon such notice, Exhibit A shall also be attached hereto as Exhibit "C"~~ replaced with the updated investment policy.

10. Organization Structure of the Foundation. The organizational structure of the Foundation is set forth in the Foundation's Articles of Incorporation and the Bylaws. The Foundation agrees to provide copies of such Articles and Bylaws as well as any subsequent amendments to such documents to ~~both the University and the State Board. Any such amendments to the Articles and Bylaws shall be attached hereto as additions to Exhibit "D" and "E", respectively.~~

## **ARTICLE V**

### **Foundation Relationships with the University**

At all times and for all purposes of this Operating Agreement, the University and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party, provided, however, the University and the Foundation acknowledge that the Foundation carries out functions for the benefit of the University. As such, the Parties shall share certain

information as provided below.

1. Access to Records. ~~Subject to recognized legal privileges and any third party obligations of confidentiality and protection of proprietary information, each Party shall have the right to access the other Party's financial, audit, donor and related books and records as needed to properly conduct its operations.~~ The University shall have reasonable access to the financial records of the Foundation upon permission granted by the Foundation from time to time, which shall not be unreasonably withheld. All access by the University of such records shall be made in accordance with applicable laws and Foundation policies and guidelines. In addition, upon request of the Foundation, the University shall execute a confidentiality agreement and instruct its employees and agents that all confidential information of the Foundation shall be protected from disclosure. Except as specifically authorized under this Operating Agreement or any applicable confidentiality agreement between the University and the Foundation, the University's access to Foundation records shall not include the donor database and all other data, materials and information of the Foundation pertaining to past, current or prospective donors ("Confidential Donor Information"), which may be accessed only by Loaned Employees.

2. Records Management.

a. Protection of Confidential Donor Information. ~~The Parties recognize that the records of the Foundation relating to actual or potential donors contain confidential information. Such records shall be kept by the Foundation in such a manner as to protect donor confidentiality to the fullest extent allowed by law. Notwithstanding the access to records permitted above, access to such confidential information by the University shall be limited to the University's President and any designee of the University's President~~ Confidential Donor Information. The Foundation owns and controls the Confidential Donor Information. The Confidential Donor Information is proprietary to the Foundation and constitutes confidential information and trade secrets. The Foundation is responsible for monitoring and controlling access to the Confidential Donor Information and protecting the security of the Confidential Donor Information. Accordingly, in providing information technology services, including data security and incident management, to the Foundation, OIT will comply with (a) the Foundation's data security plan, (b) all Foundation policies and procedures regarding the access, use disclosure, retention, deletion and processing of the Confidential Donor Information and (c) the security principle of least privilege to ensure that the security architecture is designed such that each OIT personnel is granted the minimum system resources and authorizations needed to perform the information technology support services for the Foundation.

b. Maintenance of Records. The Foundation shall be responsible for maintaining all permanent records of the Foundation including but not limited to the Foundation's Articles, Bylaws and other governing documents, all necessary documents for compliance with IRS regulations, all gift instruments, Confidential Donor Information and all other Foundation records as required by applicable laws.

c. Inapplicability of State Laws. The Foundation shall foster an atmosphere of openness in its operations, consistent with the prudent conduct of its business. The Parties understand that the Foundation is not a public agency or a governing body as defined in the Idaho



~~Code, including the Idaho Open Meetings Law and Public Records Act. Nothing in the Operating Agreement shall be construed as a waiver of the Foundation's right to assert these statutes do not apply to the Foundation as a separate charitable entity. Although the Foundation is a private entity and is not subject to the Idaho Public Records Law, the Foundation, while protecting personal and private information related to private individuals, is encouraged, to the extent reasonable, to be open to public inquiries related to revenue, expenditure policies, investment performance and/or similar non-personal and non-confidential financial or policy information.~~

d. Each Party shall take all steps necessary to monitor and control access to the donor database and to protect the security of the server and software relevant to the database.

3. Name and Marks. ~~Each Party hereby grants the other a non-exclusive, royalty-free, nonsublicensable, nontransferable license to use the trademarks of the other Party, specifically: "Boise State University" and "Boise State University Foundation, Inc." (the "Licensed Marks") solely in connection with activities conducted in association with or for the benefit of the other Party. The foregoing notwithstanding, no rights are granted to a receiving Party to obtain in that Party's name domain names or social media incorporating the Licensed Marks. Neither Party may delegate, assign or sublicense the rights granted hereunder without express prior written consent from the other Party. All goodwill arising from a Party's use of the Licensed Marks shall inure to the benefit of the granting Party. Each Party shall adhere to the granting Party's strict quality control standards relative to use of the Licensed Marks and shall submit, upon the granting Party's request, exemplars of use to permit the granting Party to verify the other Party's compliance herewith. Neither party shall use the Licensed Marks to disparage the granting Party in any way, or in a manner that may tarnish or dilute the granting Party's trademark rights. Each granting Party reserves the right to terminate this license on 60 days' notice in consequence of the other Party's noncompliance herewith, subject to the other Party's curing the breach within such 60-day period. Consistent with its mission to help to advance the plans and objectives of the University, the University grants the Foundation the limited, non-exclusive right to use the name of the University for use in its support of the University in connection with the Foundation's organizational business and activities. Any use by the Foundation of the University's logotypes or other trademarks must be with prior approval of the University through the Office of Trademark Licensing and Enforcement.~~

4. Identification of Source. The Foundation shall be clearly identified as the source of any correspondence, activities and advertisements emanating from the Foundation.

5. Establishing the Foundation's Annual Budget. ~~The After the Parties have completed the process described in the Service Agreement related to forecasting the Foundation Service Charge and the University Service Charge for the next fiscal year and prior to the start of such next fiscal year, the Foundation shall provide the University President with the Foundation's proposed annual operating budget and capital expenditure plan (if any) prior to the date as approved by the Foundation's Board of Directors meeting at which the Foundation's Board will vote to accept such operating budget.~~ Any of the University's funding requests to the Foundation shall be communicated in writing by the University President to the Foundation's CEO Executive Director by April 1 of each year.

~~6. Attendance of University's President at Foundation's Board of Director Meetings. The University's President shall be invited to attend all meetings of the Foundation's Board of Directors and may act in an advisory capacity in such meetings.~~

7.6. Supplemental Compensation of University Employees. Any supplemental compensation of University employees by the Foundation must be preapproved by the State Board. Any such supplemental payment or benefits must be paid by the Foundation to the University, and the University shall then pay compensation to the employee in accordance with the University's normal practice. No University employee shall receive any payments or other benefits directly from the Foundation.

8.7. Strategic Planning. The University shall include the Foundation as an active and prominent participant in the strategic planning for the University. The Foundation shall include the University Vice President for University Advancement in the strategic and budget planning for the Foundation.

## **ARTICLE VI**

### **Audits and Reporting Requirements**

1. Fiscal Year. The Foundation and the University shall have the same fiscal year.

2. Annual Audit. ~~On an annual basis, the~~The Foundation shall have an annual financial audit conducted by a qualified, independent certified public accountant who is not a director or officer of the Foundation. The annual audit report will be provided on a timely basis to the University's President and the State Board, in accordance with the State Board's schedule for receipt of said annual audit. The Foundation's annual statements will be presented in accordance with auditing standards promulgated by the Financial Accounting Standards Board (FASB) generally accepted in the United States of America (GAAS). The Foundation is a component unit of the University as defined by the Government Accounting Standards Board (GASB). Accordingly, the University is required to include the Foundation in its financial statements which follow a GASB format. Therefore, the Foundation will include in its audited financial statement, schedules reconciling the ~~FASB-GAAS~~ Statements to GASB standards in the detail required by GASB Standards. The annual audited financial statements, including the auditor's independent opinion regarding such financial statements, and schedules shall be submitted to the University Office of Finance and Administration in sufficient time to incorporate the same into the University's statements. All such reports and any accompanying documentation shall protect ~~donor~~ Confidential Donor Information to the extent allowable by law.

3. Separate Audit Rights. If either Party has questions or concerns regarding the expenditure or collection of donor funds by the other, they shall each designate an employee or other representative to discuss the matter. If the matter remains unresolved, then the following shall apply: The University agrees that the Foundation, at its own expense, may at any time during normal business hours conduct or request additional audits or reviews of the University's books and records pertinent to the expenditure of donated funds. The Foundation agrees that the University and the State Board, at its own expense, may, at reasonable times, inspect and audit the Foundation's books and accounting records pertinent to the expenditure of donated funds.

4. Annual Reports to University President. On a regular basis, which shall not be less than annually, the Foundation shall provide a written report to the University President setting forth the following items:

- a. the annual financial audit report;
- b. an annual report of Foundation transfers made to the University, summarized by University department;
- c. an annual report of unrestricted funds received by the Foundation;
- d. an annual report of unrestricted funds available for use during the current fiscal year;
- e. a list of all of the Foundation's officers, directors, and ~~employees~~Loaned Employees;
- f. a list of University employees for whom the Foundation made payments to the University for supplemental compensation or any other approved purpose during the fiscal year, and the amount and nature of that payment;
- g. a list of all state and federal contracts and grants managed by the Foundation;
- h. an annual report of the Foundation's major activities;
- i. an annual report of each real estate purchase or material capital lease, investment, or financing arrangement entered into during the preceding Foundation fiscal year for the benefit of the University; and
- j. an annual report of (1) any actual litigation involving the Foundation during its fiscal year; (2) identification of legal counsel used by the Foundation for any purpose during such year; and (3) identification of any potential or threatened litigation involving the Foundation.

5. Reports to University Leadership. The Foundation will provide regular reports to certain University leadership (including the University President and Provost, Vice Presidents, Deans and central leadership of the University) on fundraising progress. Foundation leadership, including the Foundation CEO and Foundation's lead fundraisers, will provide quarterly reports to University leadership to assess progress towards meeting the Vital Goals, including the Fundraising Goal, review of open proposals and progress towards engagement, marketing and communication priorities and other appropriate fiscal reports. Information disclosed by the Foundation in the quarterly reports will not include Confidential Donor Information, which will remain in the possession of the Foundation. At the end of the fiscal year, the Executive Chair of the Foundation Board and the Foundation CEO will meet with the University President to assess the Foundation's success and areas for improvement.

## ARTICLE VII

## **Conflict of Interest and Code of Ethics and Conduct**

1. Conflicts of Interest Policy and Code of Ethics and Conduct. The Foundation's Conflict of Interest Policy is attached as Exhibit "~~F~~"B., ~~and its Personal Commitment of Foundation Board of Directors Responsibilities is set forth as Exhibit "G".~~ The Foundation shall provide the University any updates to the Foundation's conflict of interest policy, and upon such notice, Exhibit B shall be replaced with the updated conflict of interest policy.

2. Dual Representation. Under no circumstances may a University employee represent both the University and the Foundation in any negotiation, sign for both entities in transactions, or direct any other institution employee under their immediate supervision to sign for the related Party in a transaction between the University and the Foundation. This shall not prohibit University employees from drafting transactional documents that are subsequently provided to the Foundation for its independent review, approval and use.

3. Contractual Obligation of the Parties. Neither Party shall enter into any contract that would impose a financial or contractual obligation on the other without first obtaining the prior written approval of the other. University approval of any such contract shall comply with policies of the State Board with respect to State Board approval of University contracts.

4. Acquisition or Development of Real Estate. The Foundation shall not acquire or develop real estate or otherwise build facilities for the University's use without the University first obtaining approval of the State Board. In the event of a proposed purchase of real estate by the Foundation for the University, the University shall notify the State Board at the earliest possible date. Any such proposed purchase for the University's use shall be a coordinated effort of the University and the Foundation. Any notification to the State Board required pursuant to this paragraph may be made through the State Board's chief executive officer in executive session pursuant to Idaho Code Section 74-206(1).

## **ARTICLE VIII General Terms**

1. ~~Effective DateTerm. This Operating Agreement shall be effective on the date set forth above~~The initial term of this Operating Agreement shall commence on the Effective Date and end on June 30, 2027 ("Initial Term"), and thereafter, this Operating Agreement shall automatically renew for successive three-year terms (each a "Renewal Term" and, together with the Initial Term, "Term"), unless and until terminated in accordance with the terms and conditions contained in this Operating Agreement.

2. Right to Terminate. This Operating Agreement shall terminate upon the mutual written agreement of both Parties. In addition, either Party may, upon 90 days' prior written notice to the other, terminate this Operating Agreement, and either Party may terminate this Operating Agreement in the event the other Party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non-defaulting Party specifying the nature of the default. Should the University choose to terminate this Operating Agreement by providing 90 days' written notice or in the event of a default by the Foundation that

is not cured within the time frame set forth above, the Foundation may require the University to pay, within 180 days of written notice, all debt incurred by the Foundation on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this Operating Agreement by providing 90 days' written notice or in the event of a default by the University that is not cured within the time frame set forth above, the University may require the Foundation to pay any debt it holds on behalf of the Foundation in like manner. The Parties agree that in the event this Operating Agreement shall terminate, they shall cooperate with one another in good faith to negotiate a new agreement within six (6) months. In the event negotiations fail, the Parties will initiate the dispute resolution mechanism described below (through reference to the Foundation Executive Chair and the State Board) to further attempt to negotiate a new agreement within the time period specified herein, they will refer the matter to the State Board for resolution. Termination of this Operating Agreement shall not constitute or cause dissolution of the Foundation.

3. Dispute Resolution. The Parties agree that in the event of any dispute arising from this Operating Agreement, they shall first attempt to resolve the dispute by working together with the appropriate staff members of each of the Parties. If the staff cannot resolve the dispute, then the dispute will be referred to the ~~Executive Chair of the Board of the~~ Foundation CEO and the University President. If the Foundation ~~Board Executive Chair~~CEO and the University President cannot resolve the dispute, then the dispute will be referred to the Foundation Executive Chair and the State Board for resolution. If they are unable to resolve the dispute, the Parties shall submit the dispute to mediation by an impartial third Party or professional mediator mutually acceptable to the Parties. If and only if all the above mandatory steps are followed in sequence and the dispute remains unresolved, then, in such case, either Party shall have the right to initiate litigation arising from this Operating Agreement. In the event of litigation, the prevailing Party shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs, attorney fees, and other professional expenses.

4. Dissolution of Foundation. Consistent with provisions appearing in the Foundation's Bylaws and Articles of Incorporation, should the Foundation be dissolved or cease to be an Internal Revenue Code §501(c)(3) organization, the Foundation shall transfer to the State Board the balance of all property and assets of the Foundation, after the payment of all debts and obligations of the Foundation, and such property shall be vested in the State Board in trust for the continued support and benefit of the University.

5. Board Approval of Operating Agreement. Prior to the Parties' execution of this Operating Agreement, an unexecuted copy of this Operating Agreement must be approved by the State Board. Furthermore, this Operating Agreement, including any subsequent modifications and restatements of this Operating Agreement, shall be submitted to the State Board for review and approval ~~no less frequently than once every three (3) years or more frequently if otherwise~~ as required by the then applicable State Board's Policies and Procedures (currently, Section V.E.) and as requested by the State Board.

6. Modification. Any modification to the Operating Agreement or Exhibits hereto shall be in writing and signed by both Parties.

7. Providing Documents to and Obtaining Approval from the University. Unless otherwise indicated herein, any time documents are to be provided to the University or any time the University's approval of any action is required, such documents shall be provided to, or such approval shall be obtained from, the University's President or an individual to whom such authority has been properly delegated by the University's President.

8. Providing Documents to and Obtaining Approval from the Foundation. Unless otherwise indicated herein, any time documents are to be provided to the Foundation or any time the Foundation's approval of any action is required, such document shall be provided to, or such approval shall be obtained from, the Foundation's Board of Directors or an individual to whom such authority has been properly delegated by the Foundation's Board of Directors.

9. Notices. Any notices required under this Operating Agreement may be mailed or delivered as follows:

To the University:

President  
Boise State University  
1910 University Drive  
Boise, Idaho 83706

with a copy to:

~~Vice President for University Advancement~~General Counsel  
Boise State University  
~~1173-1910~~ University Drive  
Boise, Idaho 83706

To the Foundation:

Foundation Board Executive Chair  
Boise State University Foundation, Inc.  
1173 University Drive  
Boise, Idaho 83706

with a copy to:

~~Executive Director~~Foundation CEO  
Boise State University Foundation  
1173 University Drive  
Boise, Idaho 83706

10. No Joint Venture. Notwithstanding anything to the contrary in this Operating Agreement, the Foundation maintains its position that it is a separate charitable entity not subject



to laws applicable to state public bodies, such as open records and meeting laws. At all times and for all purposes of this Operating Agreement, the University and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party.

11. Liability. The University and Foundation are independent entities and neither shall be liable for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, ~~members~~ or employees.

12. Indemnification. To the extent allowed by law, the University and the Foundation each agree to indemnify, defend and hold the other Party, their officers, directors, agents and employees harmless from and against any and all losses, liabilities, and claims, including reasonable attorney's fees arising out of or resulting from the willful act, fault, omission, or negligence of the Party, its employees, contractors, or agents in performing its obligations under this Operating Agreement. This indemnification shall include, but not be limited to, any and all claims arising from an employee of one Party who is working for the benefit of the other Party. Nothing in this Operating Agreement shall be construed to extend to the University's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 *et seq.*

13. Assignment. This Operating Agreement is not assignable by either Party, in whole or in part.

14. Governing Law; Required Certification. This Operating Agreement shall be governed by the laws of the State of Idaho.

14. University is prohibited by state law from entering into certain contractual agreements. Foundation hereby certifies that: (i) pursuant to Idaho Code Section 67-2346, if it is a company, the total value of the contractual agreement exceeds one hundred thousand dollars(\$100,000), and it employs ten or more persons, it is not currently engaged in, and will not for the duration of the Agreement engage in, a boycott of goods or services from Israel or territories under its control; (ii) pursuant to Idaho Code Section 67-2359, if it is a company, it is not currently owned or operated by the People's Republic of China led by the Chinese communist party and will not for the duration of the Agreement be owned or operated by the People's Republic of China; and (iii) except to the extent this Agreement is a contract or commercial transaction that is subject to a federal law related to Medicaid or a contract with a hospital as defined in Idaho Code, Section 39-1301, it is not an abortion provider or an affiliate of an abortion provider under the No Public Funds for Abortion Act. The terms in this paragraph defined in Idaho Code Section 67-2346, Idaho Code Section 67-2359, and in Title 18, Chapter 87, Idaho Code, respectively, shall have the meanings defined therein. This certification is made solely to comply with the Idaho statutes referenced herein and to the extent such section does not contravene applicable State or federal law.

15. Severability. If any provision of this Operating Agreement is held invalid or unenforceable to any extent, the remainder of this Operating Agreement is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

16. Entire Agreement. This Operating Agreement ~~constitutes~~ and the agreements contemplated to be entered into by the Parties under this Operating Agreement, which are (a) the Service Agreement, (b) AFC Lease Agreement, and (c) Loaned Employee Agreements (collectively with this Operating Agreement, (“parties’ Agreements”)), constitute the entire agreement among the Parties pertaining to the subject matter hereof, Parties’ Agreements. In the event of any inconsistency between the provisions of the Parties’ Agreements, the provisions of this Operating Agreement shall control. This Operating Agreement amends, restates and replaces the Prior Operating Agreement and supersedes all prior agreements and understandings pertaining thereto.



IN WITNESS WHEREOF, the University and the Foundation have executed this Operating Agreement on the above specified date.

BOISE STATE UNIVERSITY:

By: \_\_\_\_\_

Name: Marlene Tromp

Its: President

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: Vice President for University Advancement

BOISE STATE  
UNIVERSITY FOUNDATION, INC.:

By: \_\_\_\_\_

Name: Jim Martin

Its: Executive Chair of the Board of Directors

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: Executive Director

Approved by the State Board of Education on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**EXHIBIT "A"**

~~Loaned Employee Agreement~~ INVESTMENT POLICY

**EXHIBIT “B”**

~~Support Agreement~~ CONFLICT OF INTEREST POLICY

**EXHIBIT “C”**

**Investment Policy**

**EXHIBIT "D"**

**Articles of Incorporation**

EXHIBIT "E"

Bylaws

**EXHIBIT "F"**

**Conflict of Interest Policy**



**EXHIBIT "G"**

**Personal Commitment of Foundation Board of Directors Responsibilities**

## 2024 SERVICE AGREEMENT

This 2024 Service Agreement (“**Agreement**”) is entered into effective the 1st day of July, 2024 (“**Effective Date**”) by and between Boise State University, a body politic and corporate organized and existing under the constitution and laws of the State of Idaho (“**University**”), and the Boise State University Foundation, Inc., an Idaho non-profit corporation (“**Foundation**”). The University and the Foundation are sometimes referred to herein separately as a “**Party**” and collectively as the “**Parties**.”

### ARTICLE I

#### BACKGROUND

1.1 **Background.** The Foundation is the primary affiliated foundation responsible for assisting the University in soliciting, managing and distributing private support for the University. The Parties desire to document the services provided by each Party to the other Party and the corresponding charges for such services.

1.2 **Loaned Employees.** The University and the Foundation have entered and will enter into additional agreements (each such agreement, a “**Loaned Employee Agreement**”) for the loaning of Loaned Employees (as defined in Exhibit A) to the Foundation by the University. The Loaned Employee Agreements shall set forth the relative rights and responsibilities of the Foundation and the University with respect to the Loaned Employees. The Loaned Employees have no function at the University other than to act in their capacity as employees loaned to the Foundation and are subject to the exclusive day-to-day direction, control and supervision of the Foundation.

### ARTICLE II

#### SERVICES

2.1 **University Services.** The University shall provide the following services to the Foundation in accordance with the terms of this Agreement: administrative support in payroll processing (including payment), employee benefits (including administration and payment), travel support, event support, accounts payable (including employee expense reimbursement and use of the University’s purchasing cards), human resource management relating to hiring, retention and training, information technology (including cloud and hosting services, backup solutions, data and network security, managed security services and monitoring, information technology support services, software as a service, incident management, hardware installation and maintenance and software development), mail services and communication, publication and marketing professional services to the Foundation (collectively, “**University Services**”).

2.2 **Foundation Services.** The Foundation shall provide the following services to the University in accordance with the terms of this Agreement: asset management, investment, fundraising, alumni relations and certain information technology services (collectively, “**Foundation Services**” and, together with the University Services, “**Services**”).

## ARTICLE III

### SERVICE CHARGES

3.1 **University Service Charge.** The University will charge the Foundation for the University Services (“**University Service Charge**”) provided by the University each fiscal year. The University Service Charge shall be calculated as follows:

$$\begin{aligned} &\text{University Service Charge} \\ &= \\ &\text{Loaned Employee Payments} + \text{OIT Costs} + \text{Operations Support Costs} + \\ &\text{Rent} \end{aligned}$$

3.1.1 **Components of University Service Charge.** Each of the components of the University Service Charge and the defined terms used in defining those components are defined on Exhibit A hereto, which is incorporated herein by this reference.

3.1.2 **Changes to Components of University Service Charge.** Certain components of the University Service Charge may be adjusted pursuant to the terms of this Section 3.1.2 prior to the beginning of each fiscal year. Any adjustment to the following components of the University Service Charge shall be evidenced by an amendment to Exhibit A, which shall be executed by the Chief Executive Officer of the Foundation (“**Foundation CEO**”) and President of the University (“**University President**”).

3.1.2.1 **Generally.** For the fiscal year commencing July 1, 2025 (“**FY26**”) or any fiscal year after FY26, each of the OIT Costs, Payroll Support Amount, Accounts Payable Amount and Rental Rate (each, a “**Component**”) may be adjusted as follows: (a) the Foundation CEO and University President may agree to increase or decrease a Component by an amount that is equal to or less than 5% of the amount of such Component for the prior fiscal year without the approval of the Idaho State Board of Education (“**State Board**”) or the Foundation’s Board of Directors (“**Foundation Board**”); and (b) the State Board and the Foundation Board must approve any increase or decrease in a Component by an amount that is greater than 5% of the amount of such Component for the prior fiscal year.

3.1.2.2 **Discontinuation of Services.** If any of the Services provided by the University to the Foundation are discontinued in their entirety and such discontinued Services comprise all Services described in a term defined on Exhibit A, then the defined term associated with such discontinued Services shall be removed from the formula for calculating the University Service Charge set forth in Section 3.1.

3.2 **Foundation Service Charge.** The Foundation will charge the University for the Foundation Services (“**Foundation Service Charge**” and, together with the University Service Charge, the “**Service Charges**”) provided by Foundation each fiscal year. The Foundation Service Charge shall be calculated as follows:

$$\begin{aligned} &\text{Foundation Service Charge} \\ &= \\ &\text{Cost to Raise a Dollar} \times \text{Fundraising Goal} \end{aligned}$$

**3.2.1 Components of Foundation Service Charge.** Each of the components of the Foundation Service Charge and the defined terms used in defining those components are defined on Exhibit A hereto.

**3.2.2 Changes to Components of Foundation Service Charge.** The following component of the Foundation Service Charge may be adjusted pursuant to the terms of this Section 3.2.2 prior to the beginning of each fiscal year. Any adjustment to the following component of the Foundation Service Charge shall be evidenced by an amendment to Exhibit A, which shall be executed by the Foundation CEO and the University President.

**3.2.2.1 CRD Amount.** For FY26 or any fiscal year after FY26, the CRD Amount may be adjusted as follows: (a) the Foundation CEO and University President may agree to increase or decrease the CRD Amount by an amount that is equal to or less than 5% of the prior fiscal year's CRD Amount without the approval of the State Board or the Foundation Board; and (b) the State Board and the Foundation Board must approve any increase or decrease in the CRD Amount by an amount that is greater than 5% of the prior fiscal year's CRD Amount.

**3.2.3 Appropriations Holdback.** In the event the State of Idaho legislature reduces the appropriation to the University for a particular fiscal year after the fiscal year commences ("**Appropriation Holdback**"), the Foundation Service Charge may be reduced by an amount that is proportionate to the amount of the reduction to the total appropriation to the University. Upon the occurrence of an Appropriation Holdback, the University will provide prompt written notice to the Foundation of the amount of the Appropriation Holdback and the Foundation may, within 30 days of receipt of such written notice, modify the Foundation Services or reduce the number of Loaned Employees, in the Foundation's discretion, to accommodate the reduction in the Foundation Service Charge and will promptly provide written notice to the University of such modification or reduction if any.

**3.3 Charges for Services.** The Party providing the applicable Services shall charge the other Party for such Services in the amounts calculated pursuant to this Article III and payment for the Services shall be pursuant to Section 3.4. The Service Charges shall constitute full compensation to each Party for all charges, costs and expenses incurred by the other Party in providing the applicable Services, unless otherwise specifically agreed to in writing between the Parties.

#### **3.4 Reconciliation of Service Charges.**

**3.4.1 Net Service Charge.** Each Party shall charge the other Party for the Services rendered by the providing Party under this Agreement. At least 30 days prior to the end of each fiscal year, each Party shall aggregate all Service Charges owed to such Party by the other Party for all Services performed or to be performed during the current fiscal year and shall provide documentation, which may be maintained in electronic form, to the other Party of the same that is sufficient to specifically identify the Services and adequately support the Service Charges. Once the Parties have received documentation of the Service Charges owed, the Parties shall work together in good faith to aggregate both Party's Service Charges ("**Net Service Charge**"). If the Parties are unable to agree on the Net Service Charge, the procedures set forth in Section 5.3 shall apply.

3.4.2 **Payment.** On or prior to June 30th of each year, the Foundation shall make a single cash payment to the University that is in an amount equal to the Net Service Charge if the Net Service Charge is an amount owed by the Foundation to the University.

### 3.5 **Meetings and Reports.**

3.5.1 **Reports.** The Foundation will provide regular reports to certain University leadership (including the University President and the Provost, Vice Presidents, Deans and central leadership of the University) on fundraising progress. The Foundation leadership, including the Foundation CEO and the Foundation's lead fundraisers, will provide quarterly reports to University leadership to assess progress towards meeting the Vital Goals, including the Fundraising Goal, review of open proposals and progress towards engagement, marketing and communication priorities and other appropriate fiscal reports. Prior to the start of such next fiscal year, the Foundation shall provide the University President with the Foundation's proposed annual operating budget and capital expenditure plan (if any), as approved by the Foundation Board. Information disclosed by the Foundation in the quarterly reports will not include Confidential Donor Information (as defined in the Operating Agreement), which is owned, controlled and possessed by the Foundation.

3.5.2 **Forecasting Service Charges for Foundation's Annual Budget.** Beginning on April 1 of each year, Foundation leadership and University leadership will review the quarterly reports to forecast the Service Charges for the next fiscal year. The Parties shall mutually agree on the estimated Service Charges for the next fiscal year by no later than the regularly scheduled spring/summer meeting of the Foundation Board.

3.5.3 **Historical Data.** In the last year of the Initial Term and each Renewal Term (as each term is defined in Section 5.1), the Foundation CEO and the University President shall meet to discuss the components of the formulas set forth in Sections 3.1 and 3.2 to determine if such components should be updated based on historical data, such as a rolling average of the data used in a particular component over at least the prior three years, to more accurately calculate the Service Charges. If the Parties determine such components should be updated based on the historical data, the Parties will modify that certain Operating Agreement, dated effective July 1, 2024, by and between the Parties ("**Operating Agreement**") to reflect the agreed-upon changes along with any related updates to the description of the scope of the Services provided by each Party to the other Party and present the modified Operating Agreement to the State Board and the Foundation Board for approval.

## ARTICLE IV

### RECORDS; PROTECTION OF CONFIDENTIAL INFORMATION

4.1 **Retention and Access.** Each Party shall maintain accurate and complete records with respect to Services performed and Service Charges owed. Such records shall be kept at each respective Party's principal place of business, may be maintained in electronic form and shall be available for inspection and use by the other Party or its representatives during normal business

hours. In addition, upon written request of either Party, the other Party shall execute a proprietary and confidentiality agreement.

4.2 **Definition. “Confidential Information”** means (a) any information disclosed by one Party to the other Party, either directly or indirectly, in writing, orally, electronically, digitally, via the internet or in any other form or manner or acquired by inspection, observation or otherwise, that is not generally known outside of the disclosing Party unless as a result of a breach of any of the receiving Party’s obligations imposed by this Agreement, that the disclosing Party marks or identifies as confidential or with a similar legend, or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered confidential, including Confidential Donor Information, and (b) any information otherwise obtained, directly or indirectly, by the receiving Party through inspection, observation, review or analysis of information described in clause (a) of this Section 4.2.

4.3 **Exclusions.** Notwithstanding Section 4.2, Confidential Information does not include information that: (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing Party to the receiving Party; (b) becomes publicly known and made generally available after disclosure by the disclosing Party to the receiving Party through no breach of any confidentiality obligations of any Party or a third party; (c) is in the possession of the receiving Party without an obligation of confidentiality at the time of disclosure by the disclosing Party as shown by the receiving Party’s files and records immediately prior to the time of disclosure; (d) is obtained by the receiving Party from a third party lawfully in possession of such information and without a breach of such third party’s obligations of confidentiality; or (e) is independently developed by the receiving Party without use of or reference to the disclosing Party’s Confidential Information, as shown by documents and other competent evidence in the receiving Party’s possession.

4.4 **Restrictions on Disclosure and Use.** The receiving Party shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. The receiving Party shall use the same care and discretion to avoid disclosure of the disclosing Party’s Confidential Information as it uses with its own similar confidential information, and in no event with less than reasonable care. Without limiting the foregoing, the receiving Party shall: (a) limit access to any Confidential Information to receiving Party’s affiliates and the employees, contractors, agents and other representatives of the receiving Party and its affiliates (collectively, “**Representatives**”) who have a need to know in connection with the performance of the obligations under Parties’ Agreements (as defined in Section 6.11); and (b) require all Representatives having access to Confidential Information (excluding Representatives who are bound by duties of confidentiality with respect to the Confidential Information under applicable rules of professional conduct) to enter into a written agreement with the receiving Party containing restrictions with respect to the Confidential Information at least as restrictive as the restrictions set forth in this Agreement. The receiving Party shall, and shall cause its Representatives to, not use the Confidential Information of the disclosing Party except and solely in connection with the performance of the receiving Party’s obligations under the Parties’ Agreements. The receiving Party shall be liable to the disclosing Party for any act or omission by any of its Representatives that would constitute a breach of this Agreement by the receiving Party if the receiving Party engaged in such act or omission. The receiving Party shall

immediately notify the disclosing Party in the event of any unauthorized use or disclosure of the Confidential Information.

4.5 **Confidential Donor Information.** Section 3.5.1 of this Agreement and the Operating Agreement set forth additional restrictions on disclosure and use of the Confidential Donor Information, and such restrictions shall be strictly complied with by the University and its Representatives.

4.6 **Legally Compelled Disclosure.** If the receiving Party or any of its Representatives becomes legally compelled (or requested by a regulatory body) to disclose any Confidential Information, the receiving Party will provide the disclosing Party with prompt written notice prior to disclosure, unless providing such notice would violate applicable law or regulation, so that the disclosing Party may seek a protective order or other appropriate remedy (and if the disclosing Party seeks such an order, the receiving Party will, and will cause its Representatives to, provide such cooperation as the disclosing Party reasonably requests, at the expense of the disclosing Party) or waive compliance with the provisions of this Agreement. If such protective order or other remedy is not obtained or if the receiving Party's compliance with the provisions of this Agreement is waived by the disclosing Party, the receiving Party will furnish, and shall allow any Representative to furnish, only that portion of the Confidential Information that is legally required (in the opinion of its legal counsel).

4.7 **Return or Destruction.** All documents and other tangible objects containing or representing Confidential Information of the disclosing Party shall remain the property of the disclosing Party. Promptly upon the disclosing Party's request or termination of this Agreement, the receiving Party shall, and shall cause its Representatives to, either return or destroy and certify to the destruction of (at the disclosing Party's election) all documents, including electronic copies, and other tangible objects containing or representing the disclosing Party's Confidential Information; provided, however, Confidential Information of the disclosing Party that is retained in compliance with the Party's document retention policies or contained in an archived computer system backup in accordance with applicable security or disaster recovery procedures is not required to be erased provided that (a) access to such copies shall be limited to personnel who need access in compliance with applicable record retention policies or security or disaster recovery procedures and (b) such copies shall continue to be subject to the confidentiality and nonuse obligations in this Article IV.

4.8 **Survival.** The obligations of this Article IV shall survive the termination of this Agreement for a period of five years, except with respect to any trade secrets of either Party, in which case the obligations of this Article IV shall survive as long as such Confidential Information remains a trade secret of the disclosing Party as provided by applicable law.

## ARTICLE V

### TERM, TERMINATION AND DISPUTE RESOLUTION

5.1 **Term.** The initial term of this Agreement shall commence on the Effective Date and end on June 30, 2027 ("**Initial Term**"), and thereafter, this Agreement shall automatically renew for successive three-year terms (each a "**Renewal Term**" and, together with the Initial Term,

“**Term**”), unless and until terminated in accordance with the terms and conditions contained in this Agreement.

**5.2 Terminate.** This Agreement shall terminate upon the earlier of: (a) mutual written agreement of the Parties; (b) one year prior written notice by either Party to the other Party to terminate this Agreement for any reason or no reason; (c) a breach by a Party of any material provision of this Agreement and such breach is not cured within 30 days after notice from the non-breaching Party specifying the nature of the default (or if the breach is of a nature that it cannot be completely cured within the 30-day period, if the non-breaching Party does not commence such curing within such 30-day period or thereafter fails to proceed with reasonable diligence and in good faith to cure the breach); or (d) termination of the Operating Agreement. The Parties agree that in the event this Agreement terminates under this Section 5.2, they shall cooperate with one another in good faith to negotiate a new agreement within six months. In the event negotiations fail, the Parties will initiate the dispute resolution mechanism described in Section 5.3 to further attempt to negotiate a new agreement.

**5.3 Dispute Resolution.** The Parties agree that in the event of any dispute arising from the Parties’ Agreements, the Parties shall first attempt to resolve the dispute by working together with the appropriate personnel of each of the Parties. If the personnel cannot resolve the dispute within 30 days after the dispute arises, then the Foundation CEO and the University President have 30 days to resolve the dispute. If the Foundation CEO and the University President cannot resolve the dispute within 30 days, then the Executive Chair of the Foundation Board and the State Board have 30 days to resolve the dispute. If the dispute is not resolved by the Executive Chair of the Foundation Board and State Board within 30 days, the Parties shall submit the dispute to mediation by an impartial third party or professional mediator mutually acceptable to the Parties. If and only if all the above mandatory steps are followed in sequence and the dispute remains unresolved, then, in such case, either Party shall have the right to initiate litigation arising from this Agreement. In the event of litigation, the prevailing Party shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs, attorney fees and other professional expenses, if awarded by a court of competent jurisdiction.

**5.4 Effect of Termination.** Upon termination of this Agreement, each Party shall cooperate in order to effect an orderly transition of the applicable Services to the other Party, and all Service Charges shall be prorated to the extent appropriate based on the date of termination.

## ARTICLE VI

### GENERAL TERMS

**6.1 Articles, Sections, Subsections and Subparagraphs.** This Agreement consists of text divided into Articles that are identified by roman numerals (for example, I, II and III), Sections that are identified by a number corresponding to the number of the Article of which the particular Section is a part followed by the number of the Section (for example, 1.1), subsections that are identified by numbers based on the order in which the subsections appear (for example, 1.1.1, 1.1.2 and 1.1.3) and subparagraphs that are identified by numbers based on the order in which the subparagraphs appear (for example, 1.1.1.1, 1.1.1.2 and 1.1.1.3). The organization is



hierarchical, meaning that a reference to a division of this Agreement includes all of its Sections, subsections and subparagraphs (for example, a reference to a Section includes the Section and all of its subsections and subparagraphs).

6.2 **Interpretation.** In this Agreement: (a) the words “including”, “include” and similar words are to be construed as being followed by the phrase “without limitation”; (b) the word “may” is permissive and not mandatory; (c) a reference to a statute includes a reference to the corresponding provisions of any successor legislation and to any related regulations; and (d) unless expressly stated otherwise, references to an agreement, statute, regulation or any other document are to be construed as followed by the phrase “as amended from time to time.”

6.3 **Notices.** Any notices required under this Agreement must be in writing and may be delivered: (a) in person, with the date of notice being the date of personal delivery; (b) by United States Postal Service, postage prepaid for certified or registered mail, return receipt requested, with the date of notice being the date of delivery on the return receipt; or (c) by nationally recognized delivery service, such as Federal Express, with the date of notice being the date of delivery as shown on the confirmation provided by the delivery service. Notices must be addressed to the following addresses or any other address that a Party provides by notice:

To the University:

Boise State University  
Office of the President  
1910 University Dr.  
Boise, Idaho 83706

cc: counsel@uidaho.edu

To the Foundation:

Boise State University Foundation, Inc.  
Chief Executive Officer  
1173 University Dr.  
Boise, Idaho 83706

6.4 **Separate Entity; No Joint Venture.** Notwithstanding anything to the contrary in this Agreement, the Foundation maintains its position that it is a separate charitable entity not subject to laws applicable to state public bodies, such as open records and meeting laws. At all times and for all purposes of this Agreement, the University and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party. As independent entities, the University and the Foundation shall not be liable for any of the other Party’s contracts, torts or other acts or omissions, or those of the other Party’s trustees, directors, officers, employees or agents.

6.5 **Indemnification.** To the extent allowed by law, the University and the Foundation each agree to indemnify, defend and hold the other Party, their officers, directors, agents and employees harmless from and against any and all losses, liabilities, and claims, including

reasonable attorney's fees arising out of or resulting from the willful act, fault, omission, or negligence of the Party, its employees, contractors, or agents in performing its obligations under this Operating Agreement. This indemnification shall include, but not be limited to, any and all claims arising from an employee of one Party who is working for the benefit of the other Party. Nothing in this Operating Agreement shall be construed to extend to the University's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 *et seq.* .

6.6 **Assignment.** This Agreement is not assignable by either Party, in whole or in part.

6.7 **Modification.** Any modification to this Agreement other than the Exhibits shall be in writing and signed by both Parties. Modifications to the Exhibits shall be pursuant to Sections 3.1.2 and 3.2.2.

6.8 **Governing Law; Required Certification.** This Agreement shall be governed by the laws of the State of Idaho.

University is prohibited by state law from entering into certain contractual agreements. Foundation hereby certifies that: (i) pursuant to Idaho Code Section 67-2346, if it is a company, the total value of the contractual agreement exceeds one hundred thousand dollars(\$100,000), and it employs ten or more persons, it is not currently engaged in, and will not for the duration of the Agreement engage in, a boycott of goods or services from Israel or territories under its control; (ii) pursuant to Idaho Code Section 67-2359, if it is a company, it is not currently owned or operated by the People's Republic of China led by the Chinese communist party and will not for the duration of the Agreement be owned or operated by the People's Republic of China; and (iii) except to the extent this Agreement is a contract or commercial transaction that is subject to a federal law related to Medicaid or a contract with a hospital as defined in Idaho Code, Section 39-1301, it is not an abortion provider or an affiliate of an abortion provider under the No Public Funds for Abortion Act. The terms in this paragraph defined in Idaho Code Section 67-2346, Idaho Code Section 67-2359, and in Title 18, Chapter 87, Idaho Code, respectively, shall have the meanings defined therein. This certification is made solely to comply with the Idaho statutes referenced herein and to the extent such section does not contravene applicable State or federal law.

6.9 **Waiver.** Waiver by either Party of any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition contained in this Agreement.

6.10 **Severability.** If any provision of this Agreement is held invalid or unenforceable to any extent, the remainder of this Agreement is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

6.11 **Entire Agreement.** This Agreement, the Operating Agreement and the agreements contemplated to be entered into by the Parties under the Operating Agreement, which are (a) the AFC Lease Agreement by and between the Foundation and the University ("AFC Lease Agreement") and (b) the Loaned Employee Agreements (collectively with this Agreement and the Operating Agreement, "**Parties' Agreements**"), constitute the entire agreement among the

Parties pertaining to the Parties' Agreements. In the event of any inconsistency between the provisions of the Parties' Agreements and the provisions of the Operating Agreement, the provisions of the Operating Agreement shall control. If the Operating Agreement is amended at any time during the Initial Term or a Renewal Term, to the extent such amendments cause inconsistencies between this Agreement and the Operating Agreement, this Agreement shall be amended to cure such inconsistencies. This Agreement supersedes any prior written or oral statements related to the terms of this Agreement.

6.12 **Execution.** This Agreement may be signed by electronic means and in counterparts, each of which constitutes an original, and all of which together constitute a single agreement.

(Signature page follows.)

IN WITNESS WHEREOF, the University and the Foundation have executed this Agreement on the date set forth below the Party's signature to be effective on the Effective Date.

**BOISE STATE UNIVERSITY**

By: \_\_\_\_\_

Name: Marlene Tromp

Its: President

Date: \_\_\_\_\_

**BOISE STATE UNIVERSITY FOUNDATION,  
INC.**

By: \_\_\_\_\_

Name: Jim Martin

Its: Executive Chair

Date: \_\_\_\_\_

**EXHIBIT A****COMPONENTS OF SERVICE CHARGES**

**“Accounts Payable Amount”** means \$7.00.

**“Accounts Payable Costs”** means the sum of (a) the number of invoices processed by the University for the Foundation during the fiscal year multiplied by the Accounts Payable Amount and (b) any payments made by the University to third parties to pay such invoices on the Foundation’s behalf.

**“Cost to Raise a Dollar”** means the cost associated with the Foundation’s fundraising efforts to raise one dollar, which shall initially be the CRD Amount.

**“CRD Amount”** means \$0.20, which is based on current industry standards.

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**“Fundraising Goal”** means a goal for the amount of money the Foundation aims to raise through the Foundation’s fundraising efforts for the upcoming fiscal year.

**“HR Costs”** means the University’s human resources department budget for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.

**“Loaned Employees”** means all positions for which the Foundation and the University enter into Loaned Employee Agreements during a particular fiscal year regardless of whether each such Loaned Employee is loaned to Foundation by University for the entire 12 months of the fiscal year, and Foundation’s budget for the fiscal year contains the expenses associated with all such positions for the entire fiscal year.

**“Loaned Employee Payments”** means an amount equal to the actual payments made by the University for the salaries and benefits of the Loaned Employees during the fiscal year.

**“OIT”** means the University’s Office of Information Technology.

**“OIT Costs”** means the OIT budget comprised of (a) salary and fringe benefits for OIT personnel and (b) master enterprise licenses and contracts owned by the University and used, at least in part, by the Foundation for the fiscal year multiplied by a fraction, the numerator of which is the number of Loaned Employees and the denominator of which is the total number of employees of the University, including the Loaned Employees, during the fiscal year.

**“Operations Support Costs”** means the sum of Payroll Support Costs, Accounts Payable Costs and HR Costs.

**“Payroll Support Amount”** means \$2.25.

**“Payroll Support Costs”** means the product of (a) the Payroll Support Amount, (b) the number of Loaned Employees during the fiscal year and (c) the number of payroll periods in the fiscal year.

**“Rent”** means the square feet of the premises leased by the University to the Foundation pursuant to the terms of that Lease Agreement multiplied by \$22.50 (**“Rental Rate”**) for the fiscal year.

**“Vital Goals”** means the list of vital goals collaboratively developed by the Foundation CEO and the University President prior to the beginning of each fiscal year that shall include the Fundraising Goal.

Effective Date of this Exhibit A: \_\_\_\_\_

**UNIVERSITY PRESIDENT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**FOUNDATION CEO**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_